

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEAH CHRISTINE GARBISCH,

Plaintiff,

v.

KILOLO KIJAKAZI,
Acting Commissioner of the Social Security
Administration,

Defendant.¹

ORDER

20-cv-572-jdp

This case for Social Security benefits is currently on appeal after this court affirmed the decision of the commissioner. The parties have filed a renewed request for the court to issue an indicative ruling that the court would grant a motion to vacate the judgment under Federal Rule of Civil Procedure 60(b)(6). Dkt. 27. The court denied the first motion because the commissioner didn't explain why she now believed that the administrative law judge had erred. Dkt. 26. In the renewed motion, the commissioner says that this case "was among the first cases filed in the district court involving the new regulations governing the assessment of medical opinion evidence," and the commissioner's "experience from defending the new regulations for the last 18 months" leads her to "change[] [her] assessment of whether the ALJ's reasoning in this case satisfied the new medical opinion regulations." Dkt. 27, ¶ 8.

The commissioner's response "is not wholly satisfying," *Depalma v. Colvin*, No. 14-cv-817-jdp, slip. op. at 2 (W.D. Wis. May 11, 2016), because it doesn't identify any specific errors

¹ The court has updated the caption in accordance with Federal Rule of Civil Procedure 25(d).

by the administrative law judge. But in the interest of judicial economy, the court will grant the parties' motion.

The court again encourages the commissioner to make "early and decisive decisions . . . regarding whether to defend an ALJ's decision in the first place. By performing a thorough and definitive evaluation early in the case, the Commissioner can save counsel and the court considerable time and effort." *DePalma*, slip op. at 4. And the court reminds the commissioner that any request for indicative ruling should "demonstrate that her new appraisal of the case is substantially justified." *Id.* at 3.

ORDER

IT IS ORDERED that the parties' joint motion for an indicative ruling, Dkt. 27, is GRANTED. The court indicates that it is inclined to grant relief from the judgment entered on April 5, 2021, should the court of appeals remand for that purpose.

Entered January 21, 2022.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge